

COVID-19 and Labour Law: Austria

Martin Risak*

Update: 8 June 2020

Abstract

Austria has shut-down significant parts of the economy as well as public life since mid-March 2020 including schools, universities, shops, services and restaurants. Since May the measures have been relaxed towards a “new normality”. To counter dismissals a rather generous short-time work scheme was introduced that guarantees the employees an income at 80 – 90% of their former net wage. The other measures include special precautions for employees with high risks of serious etiology, special care leave and an obligation to use holidays and time credits.

Keywords: Covid-19; Labour Law; Short-time work; Health and safety; Paid care leave.

1. The general situation.

In Austria on 25th February 2020 the first patient was tested positively for the Covid-19 disease. It took some weeks though for government to get really active and only on 10th March 2020 universities were closed nationwide with the schools following on 16th March 2020. After first being only asked to stay at home since 16th March 2020 a formal shutdown was in place forbidding the entry of public places in general (exceptions for emergency reasons, helping others, occupational purposes, buying necessary goods and to “catch some air” although the latter was not limited in time and radius). Social distancing (1 meter) had (and still has to) to be followed at all times except for persons living in the same household. Also forbidden was the opening of shops to sell goods and services beyond the necessities of life; gastronomy also had to stay closed except for preparing food for home-delivery and, since 6th March, for take-away. The basis of these restrictions were ministerial ordinances foreseen in the Covid-19-Measures-Act (COVID-19-Maßnahmengesetz) that entered into force on 16th March 2020¹. If businesses were restricted due to such measures no compensation for losses resulting from this is granted by the state only a variety of subsidies without any legal entitlement to it.

* Professor of Labour Law and Law of Social Security, University of Wien, Austria.

¹ For an extensive description of all measures undertaken by the Austrian government and public authorities, see the report commissioned by the European Union Agency for Fundamental Rights (FRA) for the project “Coronavirus COVID-19 outbreak in the EU – fundamental rights implications” at https://fra.europa.eu/sites/default/files/fra_uploads/austria-report-covid-19-april-2020_en_0.pdf

As there is no such official status foreseen in Austrian law no health emergency or something similar was declared. Parliament has been extremely active though in the last weeks passing five consecutive legislative packages (the so called five ‘Covid-19 Acts’) in the first weeks of the crisis. In mid-May the 18th COVID-19-Act was passed. Most of the amendments include a ‘sunset-clause’ and will cease automatically by the end of 2020 the latest. Usually these laws were informally discussed with the social partners but – due to the fast track procedure – no formal consultation took place. The fifth package included extensive rights for the respective ministers to regulate the access to schools, universities, places of business and workplaces as well as to the public sphere. This was then the basis for a step-by-step “return to a new normality” with small shops being able to start their business after Easter with the larger ones to follow in May. In shops as well as in all closed public spaces masks have to be worn obligatorily. Schools resumed on 15th May with split classes when also restaurants and hotels opened again. Universities will stay closed though until the end of the semester although mostly written exams were resumed with physical presence the end of the summer semester.

The last relaxation was the permission of public events. In May 2020 there was a restriction of 10 persons, that was extended to 100 persons since the end of May. From July on (seated) public events, especially cultural ones, will be possible for up to 250 persons indoors and up to 500 outdoors. This will be extended to 1000 persons (indoors) and 1250 persons (outdoors) from August on.

Interestingly work itself was never forbidden during this whole period – actually public transport was continued as well as schools and daycare facilities had to offer services even during the shutdown to provide for working parents. Working from home was encouraged but still needs the consent of both parties; the protection for workplace accidents in a home-office was extended temporarily. When working outside the home precautionary measures have to be taken, especially keeping distance of at least 1 meter to other workers.

2. Short-time work.

The Austrian short-time work scheme was introduced during the 2008-crisis and was amended on 15th March to now explicitly cover the economic difficulties in connection with Covid-19. It increases the public funding of short-time work to guarantee that participating employees receive 80-90% of their last net remuneration (for apprentices 100%). The details for the short-time work scheme and its funding were then agreed between the Social Partners. Formally the Labour Market Services that administers the funds passed a Federal Directive on the Short Time Work Subsidy that mirrors this informal Social Partner agreement. The Social Partners also provided model agreements for establishments with a works council and without a works council. Once a short-time work agreement has been reached the social partners on both sides of the industry (mainly, the Chamber of Commerce and the Trade Union Federation) have to formally agree as well in order for the employer to receive public funding (the ‘short time work subsidy’) to compensate him/her for continuing

to pay the employees at least 80% - 90% of their last net income (depending on their level of pay).

Short-time working can be agreed for a maximum period of three months and be extended for three further months. The working hours have to be reduced to between 10% and 90% of those before. Before and during short time work holiday and time credits, should be used up. During short-time work, the number of employees in a business must be maintained at the same level and following the end of short time work, a one-month retention period as to be observed. Employees may only be dismissed for economic reasons after this month.

3. Special care leave.

A special form of leave parents was introduced as a reaction for the closing down of schools and childcare facilities: Employers may grant a paid special care leave for the supervision of children under the age of 14 by their employees for a period of up to three weeks. The same applies for employees who take care of people with special needs. During this period, employees will continue to draw their pay (or part of it as agreed) and in return, employers will receive a refund from the federal government of one third of the wage paid to the employee during this special care period.

4. Entitlement to continued remuneration and obligation to use annual leave.

Under Austrian contract law, employees have to be paid their remuneration even though the employer is unable to provide them with work or to make use of their work force. In case of *vis major*, i.e. natural catastrophes, civil wars or epidemics, the general opinion holds that this provision is not to be applied. Now the law expressly stipulates that all “*measures based on the COVID-19 Measures Act which lead to the prohibition or restriction of entry to establishments shall be deemed to be circumstances*” fall within the sphere of the employer, meaning that he/she is required to continue to pay wages. In return they may oblige employees to use up holiday and time credits during this period, up to a maximum of eight weeks (holiday entitlements from the current year: two weeks).

5. Special protection of high-risk persons.

A ministerial ordinance defines which employees are part of a high-risk group referring to certain illnesses. They will then be approached by their social security provider on the basis of the medication taken and their doctor will issue a certificate that they may show to their employer. They have then either be granted working from home or measures to exclude the risk of getting infected to the greatest possible degree or being relieved from work. In

the last-mentioned case the wage costs are refunded by the state. This does not apply though to persons working in core infrastructure sectors like health, transportation or supermarkets.

Copyright © 2020 Martin Risak. This article is released under a Creative Commons Attribution 4.0 International License